

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Amendments to Rules  
Governing Mercury Air Emissions  
Reporting and Reduction

**ORDER ON REVIEW  
OF ADDITIONAL NOTICE  
PLAN AND DUAL NOTICE**

This matter came before Administrative Law Judge Ann C. O'Reilly upon the request of the Minnesota Pollution Control Agency (MPCA or Agency) for a legal review under Minn. R. 1400.2060 and 1400.2080 of the Additional Notice Plan and Dual Notice of Intent to Adopt Rules in the above-captioned proceeding.

On October 30, 2013, the Agency filed documents with the Office of Administrative Hearings seeking review and approval of its Additional Notice Plan and Dual Notice.

Based upon a review of the written submissions by the Agency, including its plan to notify:

- Affected stationary source facilities identified on pages 77-78 of the Statement of Need and Reasonableness (SONAR);
- All parties registered electronically with the Agency for the purpose of receiving notice of rule proceedings;
- All parties the MPCA has on file as interested and affected parties that do not wish to receive electronic notice and, instead, wish to receive paper notices;
- Chairs and ranking minority party members of the Legislative Policy and Budget Committees with jurisdiction over the subject matter;
- All members of the Statewide Mercury TMDL Implementation Plan Oversight Committee; and
- Representatives of the Minnesota Technical Tribal Meeting

**IT IS HEREBY ORDERED THAT:**

1. The Additional Notice Plan is **APPROVED**, contingent upon sending the following groups either a paper or electronic copy of the Dual Notice:

Minnesota Hospital Association  
Recycling Association of Minnesota  
Minnesota Wastewater Operators Association  
Minnesota On-Site Wastewater Association  
Association of Minnesota Counties  
Minnesota Resource Recovery Association  
Solid Waste Association of North America – Minnesota Chapter  
Minnesota Waste Wise  
Integrated Waste Services Association  
League of Minnesota Cities  
Metropolitan Council  
Minnesota Municipal Utilities Association  
Minnesota City/County Management Association  
Association of Metropolitan Municipalities  
Iron Mining Association of Minnesota  
Minnesota Rural Electric Association  
Center for Environmental Advocacy  
Clean Water Minnesota  
Isaak Walton League (Minnesota Division)  
Minnesota Chamber of Commerce

2. The Dual Notice is **APPROVED**, provided that the Agency completes the blanks contained in the Notice of Hearing section.

Dated: November 5, 2013

s/Ann C. O'Reilly  
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ANN C. O'REILLY  
Administrative Law Judge

### MEMORANDUM

The Statement of Need and Reasonableness (SONAR) provides that the proposed rules will affect parties in various industries, including mining, metal processing, electric, utility, and waste management, as well as hospitals and industries utilizing boilers and incinerators.<sup>1</sup>

Pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22, subd. 1, an agency “*shall make* reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule” being proposed at both the hearing and notice of proposed adoption stages of the rulemaking process. (Emphasis added). These statutes impose an affirmative duty upon the agency to reach out to specific groups of

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<sup>1</sup> SONAR at p. 67.

potentially interested parties, especially when such groups are readily ascertainable and discrete.

Because the proposed rule changes may impact parties in discrete industries, as well as municipal or county-operated utilities and waste processing facilities, the MPCA should include in its additional notice plan efforts directed at organizations representing such industries or political bodies. In this way, the Agency can best meet its statutory obligation to make reasonable efforts to notify identifiable classes of persons who may be affected by the proposed rule changes.

With respect to the SONAR, the Administrative Law Judge brings to the Agency's attention that it incorrectly references the Consideration of Economic Factors as appearing in "Section IX." (See pages 72 and 74 of the SONAR.) In actuality, the Consideration of Economic Factors is contained in Section XII.

Also, there appears to be some discrepancy in the assessment of differences between: (1) the proposed rules and existing federal regulations, as described on page 73 of the SONAR; and (2) the statements contained in Section XIX, the "Comparison to Federal Standards" paragraphs set forth on page 83 of the SONAR. Section XIX (page 83) indicates that if federal regulations apply, the proposed rules will not impose additional regulations. However, statements contained on page 73 seem to indicate otherwise, in which case there may be a need to compare the proposed rules with the applicable federal regulations. Regardless, because the current review is only of the Additional Notice Plan and Notice of Proposed Rule, and because these issues do not affect notice, they are only brought to the Agency's attention for purposes of clarification.

#### **A. C. O.**